IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 28TH MAY 2007 / 7TH JYAISHTA 1929

FAO.No. 26 of 2007()

AGAINST THE ORDER DATED 25-8-2006 IN IA 160 2006 IN OS.345/2000 of PRINCIPAL SUB COURT, PALAKKAD
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APPELLANT/APPLICANT/PLAINTIFF:

MUHAMED MUSTHAFA,
KIZHAKKE PALLIKKAL, PANAKAD,
MALPPURAM.

BY ADV. SRI.AUGUSTINE JOSEPH
SRI.K.S.ROCKEY

RESPONDENTS: RESPONDENT/DEFENDANT:

V.N.PARAMESWARAN, EX.MANAGER,
V.V.P. HIGH SCHOOL, OPPOSITE HEAD POST OFFICE,
SULTANPET, PALAKAD.

BY ADV. SRI.P.CHANDRASEKHAR

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 28/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Kurian Joseph & T.R. Ramachandran Nair, JJ.

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F.A.O.NO.26 of 2007

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Dated this the 28th day of May, 2007

JUDGMENT

Kurian Joseph, J.

This is an appeal against the order dated 25.8.2006 in I.A. No.160/2006 in O.S. No.345/2000 of the Sub Court, Palakkad, filed at the instance of the plaintiff/appellant. The suit is one filed for specific performance. Originally there was an order of interim injunction. When the suit was listed for trial, it was dismissed for default for non-prosecution. An application was filed for restoration on the next day. That was also dismissed. The appellant again filed an application to restore the interlocutory application and that too was dismissed for default.

2. Though the prayer in the appeal is vehemently opposed by the counsel for the respondent, having regard to the fact that the appellant herein is not fully responsible for the dismissal of the suit since the name of the counsel was noted differently, we are of the view that the appellant should be given a chance to prosecute his case on merits at least on terms.

We allow the appeal, set aside the order passed in I.A. No.160/2006 and the orders leading to the same. O.S. No.345/2000 on the file of the Sub

Court, Palakkad is restored to file. The parties will appear before the Sub Court on 25.6.2007. The Sub Court will dispose of the suit within another three months. The appellant will pay cost to the tune of Rs.2,000/- through the counsel appearing for the respondent before this court, within two weeks and produce a memo before the court below.

(Kurian Joseph, Judge.)

(T.R. Ramachandran Nair, Judge.)

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